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THE INITIATIVE AND THE REFERENDUM IN SWITZERLAND¹

WILLIAM E. RAPPARD

Harvard University

It is the pleasant duty of every Swiss, addressing an audience of American citizens on a subject of political science, to begin by acknowledging the debt of gratitude his country owes theirs, for the benefit it has derived from the historical example of the United States.

For over a century a continuous exchange of political ideas has been going on between our two nations. After all the flattering and gratifying commentaries on our institutions that have been made on this side of the ocean,² it is but fair that we Swiss should frankly admit that in this exchange we have received more than we have given.

At the end of the 18th century Switzerland was a loose confederation of independent republics, some of which were barely more than rural communes, some commercial oligarchies and some landed aristocracies. Today, and ever since 1848, Switzerland is one country, not indeed powerful in numbers or in

¹ This paper was read at the last annual meeting of the National Municipal League at Richmond, Va., on November 15, 1911. For several formal corrections I am indebted to my friend and colleague, Dr. Arthur N. Holcombe, who kindly consented to read my manuscript.

² I refer to such works as J. M. Vincent, *State and Federal government in Switzerland* (Baltimore, 1891); W. D. MacCrackan, *The Rise of the Swiss Republic* (Boston, 1892); H. D. Lloyd, *A Sovereign People* (New York, 1907).

military resources, but strong in the consciousness of its political unity; and in all of its twenty-two constituent cantons, the democratic principle prevails. The causes to which this rapid evolution is due are, as I believe, mainly economic in their nature. But the example of the thirteen American colonies proclaiming their independence in 1776 and of the United States of America adopting the Constitution of 1789 certainly contributed in no mean measure to guide this evolution and to shape it toward a peaceful and successful close. Before taking up the subject I have been called upon to treat before you, I will, if you permit, substantiate this statement by briefly recalling a few episodes of our national history.

The first democratic movement that broke out in Switzerland after the American revolution was that which, in 1781, aimed to overthrow the aristocratic *régime* of Fribourg. Speaking of this movement in an unpublished article, Nicolas d'Alt, one of the members of the threatened aristocracy, says: "The *bourgeoisie* of Fribourg, numbering from four to five hundred armed men, impressed with the bravery of the Americans, formed a plan similar to theirs." ³ The revolutionary author of an anonymous pamphlet, published in Fribourg in the same year, begins his appeal to his countrymen with the following words: "Glorious Americans! You have taken up arms in defence of your rights. . . ." ⁴

Another outburst of democratic feeling took place in the canton of Zurich in 1794. Among the few books that were found at the club ⁵ of the leaders of this uprising was Ramsay's *History of the American Revolution*.⁶ We have evidence to show that the

³ "La Bourgeoisie de Fribourg, composée de quatre à cinq cents hommes portant armes, frappée de la grandeur du courage des Américains . . . fit un plan ressemblant au leur." See *Les Troubles de 1781 à Fribourg par Nicolas d'Alt*. Collection Gremaud, fol. 41, Archives d'Etat de Fribourg.

⁴ "Glorieux Américains! vous avez pris les armes pour la défense de vos droits . . . See *Exposé justificatif pour le peuple du canton de Fribourg en Suisse, au sujet des troubles arrivés en 1781*. (Fribourg, 1781), p. 49.

⁵ The "Leseverein Stäfa."

⁶ Cf. J. J. Hottinger, *Vorlesungen über die Geschichte des Untergangs der schweizerischen Eidgenossenschaft* (Zurich 1844) p. 130.

privileged classes in Zurich shared the interest of the malcontents on this point. In his *Lebenserinnerungen*, the patrician historian Meyer von Knonau, born in 1769, writes: "The most important historical event that happened during my childhood was the American revolution. I clearly remember that the American cause, Franklin, Washington, and other men appealed to the sympathy of all and that in my surroundings the action of the British cabinet was severely judged."⁷

These two movements were unsuccessful, but in 1798, under the immediate influence of the French revolution and under the stress of French invasion, the Swiss people abandoned the old forms of government and adopted a democratic constitution. One of the men who took an active part in the ensuing political changes was Jean Jacques Cart, a lawyer from the *Pays-de-Vaud*, who became a Swiss senator in 1801. He had lived in Boston and in New York State, both before and after the war of independence, and he assures us in his writings that "the impressions I had there received were not to be erased from my memory. So my love, my passion for liberty. . . ."⁸ Elsewhere he declares that his whole destiny was determined by his stay in the "classical land of liberty," as he calls the United States.⁹ He further tells us how, in 1798, on hearing what was going on in Switzerland, he left his plow in Ulster County and hastened to Aarau, then the Swiss capital. "There," he says, "I met the citizen director Ochs and we spoke of Washington, of Hancock, of Adams, of Jefferson, and of the Americanized Genevese Gallatin."¹⁰

I could quote many other instances of Swiss-American rela-

⁷ Das wichtigste historische Ereignis während meiner Kindheit war die Losreissung der nordamerikanischen Kolonien . . . von dem Mutterlande. Noch erinnere ich mich deutlich, dass die nordamerikanische Sache, Franklin, Washington und andere Männer. . . . Theilnahme für sich erregten, und dass ich das Verfahren des britischen Cabinetts misbilligen hörte." Ludwig Meyer von Knonau, *Lebenserinnerungen*, (Frauenfeld, 1883) p. 5.

⁸ "Les impressions reçues alors ne n'effacent jamais. Ainsi mon amour, ma passion de la liberté." . . . J. J. Cart, *De la Suisse avant la révolution et pendant la révolution*, (Lausanne, 1802), p. 9.

⁹ "Ces pays classiques de la liberté." J. J. Cart, *Lettres à F. C. Laharpe, Directeur de la République Helvétique*, (Lausanne, 1798,) p. 5.

¹⁰ Cart, *De la Suisse* etc. p. 62.

tions of this kind. But the aforementioned may suffice to show that the first democratic movements in modern Switzerland were strongly inspired and influenced by the example of America.

The Swiss Constitution of 1798 was framed after the French model of the year III (1795). Under its provisions the cantons, which had been practically sovereign before 1798, were ruthlessly merged into the "Helvetic Republic, one and indivisible" and administered by federal prefects. It immediately became evident that this constitution was ill-adapted to meet the requirements of a nation which gloried in its local diversities and which had for centuries been accustomed to the practice of local self-government. On the other hand, the need of a strong central power and the advantages of uniform legislation were also widely recognized. The smaller cantons were especially reluctant to abandon their former autonomy and the larger ones were unwilling to submit to the control of a federal government, unless a share of influence, proportional to their population, were therein secured for them.

The problem which thus faced the statesmen in Switzerland at the end of the 18th century, closely resembled that which had been so happily solved in the United States by the elaboration of the Constitution of 1789. No wonder then that voices soon arose urging the adoption of the American system. In 1799 our national historian, Johann von Müller, recommended the organization of a bicameral legislature similar to the American Congress.¹¹ In 1800 the greatest living statesman, Napoleon Bonaparte, concurred in this proposal,¹² and by 1801 the matter had been so widely discussed¹³ that, as an anonymous Swiss senator put it, the United States of America had already become a "stylish example"¹⁴ in Switzerland.

¹¹ See his *Sämmtliche Werke*, (Stuttgart and Tübingen), 1831-1835, vol. xxxii, p. 65.

¹² J. Strickler, *Aktensammlung aus der Zeit der Helvetischen Republik*, (Berne 1886-1903), vol. vi, pp. 260, 721.

¹³ Ed. Haug, *Der Briefwechsel der Brüder J. Georg Müller and Joh. von Müller*, (Frauenfeld 1893), vol. i, p. 175, 188.

¹⁴ See his article entitled *Gedanken über den Föderalismus in Helvetien*, in the *Helvetische Monatschrift*, Berne 1801, vol. vi, p. 49.

The political reaction of the Napoleonic and of the Restoration periods, however, interrupted all political progress for nearly fifty years, and so it was only in 1848 that the American "style" was adopted and the American example followed.

Ever since our country has thrived and prospered under what may properly be called the American system of federal government. To quote Mr. Bryce, I will add that our present constitution therefore "bears witness to the soundness of American doctrines."¹⁵

These introductory remarks may suffice to point out the influence the United States exerted on the political destiny of Switzerland. You have lead the way toward free and democratic institutions and we have copied the scheme you devised for conciliating states' rights and national government. That is why I may truly say that, in the field of ideal co-operation for political progress, in which the two sister republics have been engaged for over a century, the younger and somewhat portlier member of the family has done more than her share of the common work.

There is yet a third political gift which the United States has bestowed upon Switzerland. To mention it will bring me back to the subject of direct popular legislation.

In treating this subject I intend: first, to enumerate the different varieties of the initiative and of the referendum in force in Switzerland at the present time; then, to show how they came to be introduced; and finally, to determine if possible their practical results.

Before proceeding, and at the risk of seeming unduly tedious, I shall briefly define the technical terms I shall be obliged to use in the course of this paper.

The popular initiative is the right of the people, under the representative system, to propose legislative measures; the referendum, the right to accept or refuse them.

According to the political area in which these rights are exer-

¹⁵ James Bryce, *The American Commonwealth*, 2nd ed. Vol. I, p. 319.

cised, we speak of federal (or national), cantonal, or municipal initiative or referendum.

According to the measures they apply to, we speak of constitutional or legislative initiative or referendum.

We will call the right by which the people may require the legislature to consider a certain matter and submit a bill relating to it to the popular vote, the "indirect" initiative. We will call the right by which the people may require a bill, drafted without the intervention of the legislature to be submitted to the popular vote, the "direct" or "formulative" initiative.

The referendum is termed "compulsory" when it applies to bills which cannot become enforceable laws without having received the popular sanction; it is styled "optional" when it applies to bills which are not submitted to the people, except when a petition of citizens expressly and specifically requires them to be.

In Switzerland there is at present a *federal compulsory constitutional referendum*,¹⁶ a *federal optional legislative referendum*,¹⁷ and a *federal constitutional initiative*,¹⁸ which may be exercised both "indirectly" and "formatively."

A bill to introduce the federal legislative initiative has been pending before the Federal Assembly (Congress) ever since 1906, but has not yet been adopted.

In order to stand accepted, any amendment of the federal constitution must be approved by a majority of the voters at a referendum and in a majority of cantons. All federal laws, and all federal resolutions (*arrêtés législatifs*) which have a general application and which are not of an urgent nature, must be submitted to the people, if, within three months of their acceptance by the Federal Assembly, the demand is made by 30,000 voters or by 8 cantons.

The federal constitution, or any part thereof, must be submitted to the people for amendment if the demand is made by 50,000 voters.

¹⁶ Federal Constitution of 1874, art. 123.

¹⁷ *Ibid.*, art. 89.

¹⁸ *Ibid.*, arts. 120-122.

In studying the initiative and the referendum in the different cantons we must leave out of consideration Uri, Unterwalden, Glarus, and Appenzell, where legislation is still proposed and enacted by the *Landsgemeinde* or direct mass meeting of the people. In democracies where the representative system has not yet been introduced the initiative and the referendum, which are essentially schemes devised to overcome the disadvantages of that system, are naturally useless and therefore unknown.

In the nineteen other Swiss commonwealths the cantonal compulsory constitutional referendum everywhere prevails.

In all the cantons but one, (Fribourg), the cantonal legislative referendum has been introduced. In nine ¹⁹ of them it is compulsory for most important measures, especially those of a fiscal nature, and in nine ²⁰ others it is optional in all cases.²¹

The cantonal constitutional initiative is in force in all cantons, but in only a small minority ²² can it be exercised formulatively. The cantonal legislative initiative prevails in all but three ²³ commonwealths.²⁴

In two cantons ²⁵ the constitution provides that in case of ambiguity the statute law shall be interpreted by popular vote.²⁶

In all the larger Swiss cities the initiative and the referendum, the latter often compulsory in matters of public finance, have been introduced within the last thirty years.²⁷

¹⁹ Zurich, Berne, Schwyz, Solothurn, Baselland, Graubünden, Aargau, Thurgau, Valais.

²⁰ Lucerne, Zug, Schaffhausen, Baselstadt, St. Gall, Tessin, Vaud, Neuchatel, Geneva.

²¹ Theodor Curti, *Die Resultate des Schweizerischen Referendums*, (2nd ed. Berne 1911), p. 4. In the preparation of this paper a very extensive use has been made of this book as well as of several other works by the same author. Mr. Curti, the foremost Swiss authority on the subject of direct popular legislation, is one to whom all students of present day politics must feel deeply indebted.

²² When the federal government adopted the formulative constitutional initiative, it had been tried only in Zurich, Schaffhausen and Tessin. Cf. Charles Borgeaud, *Etablissement et révision des Constitutions* (Paris, 1893), pp. 339, 344.

²³ Lucerne, Fribourg, Valais.

²⁴ Curti, *Die Resultate* etc., p. 3.

²⁵ Solothurn and St. Gall.

²⁶ Curti, *Die Resultate* etc. p. 4.

²⁷ *Ibid.*, pp. 10-16.

Such, briefly stated, is the present status of the initiative and the referendum in Switzerland.

Let us now consider when and how these institutions came to be adopted.

The compulsory constitutional referendum, by far the most important of all varieties of popular legislation, was also chronologically the first to be introduced in modern Switzerland.

The constitution of 1798, although it was not itself submitted to the people, provided that all future amendments should be ratified by "primary assemblies" (*assemblées primaires*).²⁸ This constitution, as I have already observed, was a close imitation of the French fundamental law of 1795;²⁹ and all the French revolutionary constitutions were very directly influenced by American models.³⁰ It is therefore not stretching historical truth, to claim that we Swiss owe the most essential feature of modern direct democracy to America.³¹

The first Swiss constitution that was actually submitted to the people for ratification was that of 1802.³²

After the French July Revolution, a wave of democratic reform swept over Switzerland. As a result several cantons modified their form of government, and in all that did so, except Fribourg, the principle of the constitutional referendum was recognized. After 1848 no cantonal constitution was accorded the federal sanction unless it had previously been ratified by the people.³³

Although a somewhat analogous institution had prevailed before in the Valais and in the Grisons,³⁴ one may say that the modern optional legislative referendum was also a product of the

²⁸ Helvetic Constitution of 1798, arts. 106, 107.

²⁹ Cf. A. Aulard, *Histoire politique de la Révolution française*, (Paris 1901), pp. 543-579.

³⁰ This has been conclusively shown by Charles Borgeaud in his above-quoted work. Cf. pp. 27-31, 243, 248 et seq.

³¹ This debt has been expressly recognized by Theodore Curti. See his Open Letter to Dr. George J. King, reprinted in the January, 1910 number of the Equity series.

³² Curti, *Geschichte der Schweizerischen Volksgesetzgebung*, (2nd ed. Zurich, 1885), p. 109.

³³ Federal Constitution of 1848, art. 6, litt. c.

³⁴ A. E. Cherbuliez, *De la démocratie en Suisse*, (2 vols. Paris, 1843), vol. i, p. 92.

democratic movement of 1830. It was first introduced in St. Gall in 1831,³⁵ Baselland adopted it in the following year, Lucerne in 1841,³⁶ Vaud in 1845,³⁷ Schwyz in 1848.³⁸ It then spread rapidly and today, as before remarked, Fribourg is the only canton which has not yet accepted it.

The federal constitution of 1848 underwent a general revision in 1874 and the optional legislative referendum was then introduced.³⁹ As Professor Borgeaud says, it "entered the Federal Constitution as a concession to minorities and a counter-poise to the new powers which the revised articles took away from the states in order to lodge them with the Union."⁴⁰

The compulsory legislative referendum was introduced, for all legislation in Baselland in 1863⁴¹; for the most important measures only in Zurich, Thurgau, Berne and Solothurn in 1869 and in Aargau a year later⁴²; for financial matters only in Neuchâtel in 1858 and in Vaud in 1861.⁴³

In the cantons where the compulsory legislative referendum is most developed, the measures subjected to popular ratification are voted on once or twice a year at dates established by law. In Berne, for instance, all important bills adopted by the legislature in the course of the preceding year are voted on by the people on the first Sunday in May.

The constitutional initiative, in its primitive form, was simply the right of the people to demand a general revision of the fundamental law. This right was first proclaimed in a number of the cantonal constitutions drawn up after the revolutionary movement of 1830,⁴⁴ and was looked upon as an extremely dan-

³⁵ Curti, *Geschichte* etc., p. 128 et seq.

³⁶ *Ibid.*, p. 126.

³⁷ *Ibid.*, p. 127.

³⁸ *Ibid.*, p. 207.

³⁹ Federal Constitution of 1874, art. 89.

⁴⁰ Charles Borgeaud, *Practical results which have attended the introduction of the referendum in Switzerland*. The Arena, May, 1905.

⁴¹ Curti, *Geschichte*, etc., p. 211.

⁴² *Ibid.*, pp. 212-214.

⁴³ *Ibid.*, p. 209.

⁴⁴ Cherbuliez, vol. i, p. 83.

gerous innovation by the conservative publicists of the day.⁴⁵ By 1848, however, it had been generally recognized to be what it undoubtedly is, a very effective safeguard against violent outbursts of popular discontent. It was therefore imposed on all cantons by the Federal Constitution,⁴⁶ which adopted it also for the federal state.⁴⁷

That the right to demand a general revision of the constitution implied the right to demand certain specific amendments thereto, seems logically evident and legally certain. But although the Federal Constituent Assembly in 1848 had in clear terms expressed this to be its opinion, the national legislature in 1879 refused to consider a petition signed by more than 50,000 voters requesting that the people be consulted on the expediency of amending the constitution on a particular point. This somewhat autocratic attitude of the legislators aroused a wide-spread feeling of discontent, which, after much desultory discussion, culminated in 1891, in the adoption by the people of a very radical measure. The principle of federal formulative constitutional initiative was then embodied in the Constitution.⁴⁸ Any 50,000 voters have thereby acquired the right to oblige the people to vote directly on any constitutional amendment they may see fit to propose.

The adoption of this measure may be called a "fluke," as it was certainly not in the line of a normal evolution that the federal constitution, the highest law of the land, should be rendered more easily amendable than all other federal, and than most cantonal, legislation.⁴⁹

⁴⁵ Cherbuliez, for instance, says: "Je ne connais rien dans l'histoire qui ressemble à cette instabilité des institutions consacrée en principe et devenue le droit commun de 13 peuples." He adds in a footnote: "Aux Etats-Unis d'Amérique les constitutions de New Hampshire, Vermont et Indiana sont, si je ne me trompe, les seules qui n'accordent pas à la législature l'initiative exclusive des referendums constitutionnels." *op. cit.*, p. 85.

⁴⁶ Federal Constitution of 1848, art. 6, litt. c.

⁴⁷ *Ibid.*, art. 113.

⁴⁸ Borgeaud, *Etablissement*, etc., pp. 370, et seq.

⁴⁹ It shocked even so progressive a statesman as Numa Droz, who declared that by accepting it the Swiss people had abandoned democracy for demagoguery. Numa Droz, *Etudes et portraits politiques*, (Geneva and Paris, 1898), p. 453.

The cantonal legislative initiative was first introduced in Switzerland in the Vaud constitution of 1845.⁵⁰ The debates of the constituent assembly do not show whether this innovation was devised merely as an extension of the right of petition or whether it was suggested by some radical writing of the day. It is certain, however, that the political revolution which broke out at Lausanne in 1845 was not uninfluenced by the contemporary communistic movement of German artisans, which had its center in the canton of Vaud, and it is at least possible that the very advanced reforms then introduced are in some degree related to that movement.⁵¹ The chief cause of the Vaud constitution of 1845, however, must be sought in the general political situation of the country. Everywhere the demand for a stronger federal union was accompanied by a corresponding demand for more democratic institutions. When the first popular wish was finally satisfied by the adoption of the constitution of 1848, the second was for a time forgotten.

But after 1860 the popular cry for more political rights was again raised and a series of cantons introduced the legislative initiative, Aargau as early as 1852,⁵² Baselland in 1863,⁵³ Zurich, Thurgau, and Solothurn in 1869.⁵⁴

When, looking over the general political development of Switzerland in the course of the 19th century, we endeavor to discover the causes which lead to the establishment of the initiative and of the referendum, we find that popular discontent with the ruling party was always and everywhere the most potent factor. In 1798, 1830 to 1833, and 1845 to 1848 the ruling party had become unpopular because of its very composition, which was aristocratic or oligarchical and therefore contrary to the demo-

⁵⁰ Curti, *Geschichte*, etc., pp. 148-157.

⁵¹ Druet and Delarageaz, two of the leading statesmen of the time in the canton of Vaud, had so befriended the German communists that these compromising *protégés* claimed them as their own. Cf. W. Marr, *Das junge Deutschland in der Schweiz*, (Leipzig 1846), pp. 287-289, 358. G. Adler, *Die Geschichte der ersten social politischen Arbeiterbewegung in Deutschland*, (Breslau, 1885), p. 69.

⁵² Curti, *Geschichte*, etc., p. 208.

⁵³ *Ibid.*, p. 211.

⁵⁴ *Ibid.*, pp. 212-3.

cratic spirit of the times. In the latter half of the century the people were most often aroused by the partial, nepotic, or autocratic behavior of the men they had themselves elected to office.

So in Neuchatel in 1858, the referendum in financial matters was introduced as a consequence of the government's railroad policy, which was unduly favoring one particular district.⁵⁵ So in Zurich in 1869 the referendum and the initiative were adopted as protests and as safeguards against the public service corporations and large moneyed interests whose influence on the government of the commonwealth and on the administration of justice was deemed threatening to public welfare.⁵⁶ Many similar instances could be quoted.

As the initiative and the referendum were the product of discontent, it is natural that they should usually have been advocated either by minority parties or by individual insurgents. Such has in general been the case and one can say that the Swiss radical-liberal party, which has been in power for over fifty years, has on the whole opposed the further extension of popular rights. Except in the cantons where the majority is conservative, most radical leaders have either fought the initiative and the referendum or accepted them reluctantly as a necessary concession to public opinion.⁵⁷

It is interesting also to note the constant relation existing between the movement in favor of direct popular legislation and that in favor of radical social and economic reform. Druey and Delarageaz, two of the leaders in the Vaud revolution of 1845, had been in close touch with the German communists Weitling and Marr.⁵⁸ Treichler, who perhaps contributed more than any other writer to introduce the direct popular vote in the cantons of Northern and Eastern Switzerland after 1848,

⁵⁵ Curti, *Geschichte*, etc., p. 209.

⁵⁶ *Ibid.*, pp. 215-238. Dr. J. Dubs, *Die schweizerische Demokratie in ihrer Fortentwicklung*, Zurich, 2868, pp. 72 et seq.

⁵⁷ S. Deploige, *Le referendum en Suisse*, (Brussels 1892), pp. 168-172; Borgeaud, *Etablissement*, etc., p. 375; Dubs, *op. cit.*, p. 76; Dr. C. Hilty, *Theoretiker und Idealisten der Demokratie*, (Berne, 1868), p. 27.

⁵⁸ Cf. note 51.

demanding labor legislation, public workshops, and gratuitous credit for the working classes, as well as the legislative referendum in his manifesto entitled "Political Principles."⁵⁹ Karl Bürkli, one of the most zealous promoters of direct democracy in Zurich in 1869, was a disciple of Fourier.⁶⁰ Even today, after many disappointments, the initiative and the referendum have no more ardent defenders in Switzerland than the socialists.

We have now to examine the last and most important question, namely, the practical working and results of the initiative and referendum in Switzerland.

If we had hours before us and not minutes, I should seek to answer that question by making a thorough study of each individual case of conflict between the people and their representatives. I should determine the nature of the bills lost through popular disapproval and of the laws imposed by the electorate on an unwilling legislature. We could then gain a well-grounded opinion of the actual effects of direct legislation on the course of political development. As it is, I shall only give a few statistical notes on the working of the initiative and referendum in the federal government in two of the largest cantons and mention the principal legislative tendencies of direct democracy in Switzerland in the course of the last half century.

From 1874 till 1908 the Federal Assembly passed 261 bills and resolutions which could constitutionally be subjected to the referendum. Thirty of these 261 were actually voted on by the people, who ratified 11 and rejected 19 of them. The effect of the federal optional legislative referendum was then to hold up a little more than 7% of the statutory output of the Federal Assembly. During the same period the national legislature proposed 17 constitutional amendments, 12 of which were accepted, and of which 5, that is 29% were thrown out by the compulsory constitutional referendum. Since 1891 up to the present time the initiative has been used 9 times in endeavors

⁵⁹ Adler, *op. cit.*, p. 71.

⁶⁰ Curti, *Geschichte*, etc., p. 216.

to amend the federal constitution. Six of these attempts failed, 3 succeeded.⁶¹

From 1831 to 1910 the St. Gall legislature passed 395 bills. 36 of these were submitted to the optional referendum and in 31 cases out of 36 the referred measure was defeated. A little over 7% of the measures proposed by the legislature in the course of 80 years were defeated by the popular vote. The constitutional initiative was tried 3 times in St. Gall since its introduction in 1891 but has always failed.⁶²

In the cantons where the legislative referendum is compulsory, it naturally acts as a more effective but less discriminating check on the legislature. In Berne, for instance, out of the 146 bills submitted to the popular vote during the 40 year period extending from 1869 to 1909, 35 were rejected, and 111 ratified. During the same time the popular initiative was resorted to on 9 different occasions but succeeded only 4 times.⁶³

Quantitatively speaking, it can hardly be said that the people have abused their right and have unduly interfered with the activity of the legislature. No doubt one hears complaints now and then about the excessive frequency of popular votes,⁶⁴ but on examining the matter closely, one finds that these protests usually spring from a feeling of dissatisfaction with the popular verdict, rather than with the institution of the popular jury which rendered it. A beaten team is naturally inclined to find fault with the rules of the game. What evil there may be with respect to a too frequent recurrence of plebiscites carries its remedy with it, as no group of individuals and no party are apt to risk their popularity by obliging the voter to go to the polls, when he has already been wearied by too often repeated appeals to his civic conscience.

⁶¹ Curti, *Resultate*, etc., p. 36.

⁶² *Ibid.*, p. 29.

⁶³ *Ibid.*, p. 26.

⁶⁴ About 60% of the registered voters usually take part in the federal referendum. This percentage has fallen as low as 40% in non-contested issues and risen as high as 77.6% in the hotly fought battle over state ownership of railroads in 1898. It has not decreased in the last 50 years and is not lower in those cantons where local elections are most frequent than in others. *Ibid.*, pp. 68, 69.

The quantitative use made of the popular vote in Switzerland has on the whole been conservative. Can the same be claimed of its qualitative effect?

In order to answer this question we must naturally distinguish between the initiative, which is essentially a positive institution, and the referendum, which, like the American executive veto, with which it has often been compared in Switzerland,⁶⁵ is essentially negative in its consequences. Curti has aptly compared the referendum to a shield for warding off undesirable legislation and the initiative to a sword which enables the people to "cut the way for the enactment of their own ideas into law."⁶⁶

The initiative has most often been used in Switzerland as a tool to undermine the position of the party in power. Thus the introduction of proportional representation, a system whose chief practical object is to strengthen minority parties, has usually been attempted by means of the initiative.⁶⁷ In several cantons it has succeeded, in the federal government, however, it has heretofore been twice defeated.⁶⁸ An initiative to introduce the popular election of the federal executive by the people has similarly been voted down.⁶⁹

The initiative has furthermore been resorted to in certain specific instances where the emotions of the people were more deeply aroused than those of their representatives. Such has quite frequently been the case in criminal matters. The national prohibition of the strong spirituous liquor called absinth was brought about by an initiative, launched under the immediate influence of a sensational murder committed by a drunkard on several members of his family.⁷⁰ The initiative has similarly been used with varied success in attempts to suppress public

⁶⁵ For instance in the constitutional debates in Zurich in 1842, Cf. Curti, *Geschichte*, etc., p. 144.

⁶⁶ Curti, *Open letter*, etc.

⁶⁷ Curti, *Die Resultate*, etc., pp. 12, 27, 31, 32.

⁶⁸ By 244,570 nays against 169,018 yeas in 1900 and by 265,194 nays against 240,305 yeas in 1910. *Ibid.*, pp. 58, 59, 64.

⁶⁹ By 270,502 nays against 145,936 yeas in 1900, *Ibid.*, p. 59.

⁷⁰ The initiators had collected the unusual number of 167,814 signature. They carried their point with the people on July 5, 1908, by 241,078 votes against 138,669. *Ibid.*, p. 62.

houses of prostitution,⁷¹ to prohibit vivisection,⁷² to reintroduce capital punishment⁷³ and to reinforce penal law with respect to strike violences.⁷⁴

A third class of measures in favor of which the initiative has been resorted to are of an eccentric, and often of an extremely demagogic nature. Such are, for example, the "right-to-work-clause," which the socialists sought to introduce into the federal constitution in 1894,⁷⁵ and the onslaught on federal finances, which was attempted in the same year, by a group of citizens, who demanded that the federal government should hand over to the cantons a sum of two francs per head of the population out of the receipts of the customs.⁷⁶ Both these proposals were voted down by tremendous majorities.⁷⁷ Their initiators had been encouraged by the success of a less perilous, if not less peculiar, measure which had been adopted in 1893. By the popular initiative a constitutional amendment, prohibiting the butchering of cattle according to the Hebrew rite, had then been added to the fundamental law of the country. This strange and illiberal measure, which had been carried amidst the indifference of the general public, thanks to the combined efforts of Jew haters (*antisémites*) and of societies for the prevention of cruelty to animals, was the first product of the federal constitutional initiative.⁷⁸

The only constructive measure of importance which Switzerland owes this institution, is an amendment to the constitution by which the federal government in 1908 acquired the right to legislate on the subject of hydraulic resources, when any

⁷¹ Succeeded in Zurich, but failed in Geneva. *Ibid.*, 24, 32.

⁷² Partially succeeded in Zurich in 1895, *Ibid.*, p. 23.

⁷³ Succeeded in Zurich in 1883, but again repealed soon after. *Ibid.*, p. 23.

⁷⁴ Partially succeeded in Zurich. *Ibid.*, p. 24.

⁷⁵ Cf. Borgeaud, *Le plébiscite du 4 novembre 1894*. *Revue de Droit public*, 1894, p. 536. Droz, *op. cit.*, p. 474.

⁷⁶ Borgeaud, *loc. cit.*, p. 537-539.

⁷⁷ 308,289 yeas against 75,880 nays in the first case, 347,401 yeas against 145,362 nays in the second.

⁷⁸ Droz, *op. cit.*, p. 473. Borgeaud, *Le plébiscite etc.*, p. 535; Curti, *Die Resultate*, etc., p. 50. The measure was carried by 191,527 yeas against 127,101 nays, the number of registered voters being upward of 660,000.

national interest was at stake.⁷⁹ This right had before been vested in the individual cantons, and the Federal Assembly, whose members are often members also of the cantonal executive boards or legislative bodies, had not seen fit to take the first steps towards depriving them of it.

The actual worth of the initiative cannot be properly estimated, as it has a potential, as well as a direct influence. Besides its positive results in Switzerland, which have fully justified neither the hopes of its friends nor the alarm of its enemies, it may have acted on the spirit of the legislatures as an animating and salutary threat. In how far this has been the case, we can but surmise, but it seems probable that the competition it establishes between the "ins" and "outs" of politics, has had a stimulating effect on the former. We cannot therefore entirely agree with Mr. Frankenthal when he suggests, at the conclusion of his Report to the Department of State that an "ounce of American primary and representative prevention" may be worth "a pound of Swiss initiative cure."⁸⁰ The initiative is not solely a cure; it is also an incentive to good, active legislation and therefore preventive of sloth and corruption.

The referendum, we have said, is essentially negative in its effects. It gives the community a chance to refuse legislative gifts. It cannot add to its institutional wealth.

Without examining the hundreds of cases in which the Swiss referendum has shown that the views of the people do not always coincide with those of their elected representatives, I will mention three great popular tendencies which it has revealed.

The first is a dislike for bureaucracy. Whenever a bill tends to increase the influence of political officials it is sure to encounter a strong opposition at the polls. Many measures, such as the federal pension bill of 1891⁸¹ or the federal banking bill of 1897⁸² have been rejected for just this reason, and many others, which

⁷⁹ Curti. *Die Resultate*, etc., p. 63. 304,923 yeas against 56,237 nays.

⁸⁰ Report to the Department of State by American Vice-consul at Berne, Switzerland, concerning the practical workings of the "Popular Initiative" in Switzerland. (61st Congress. Document No. 126, Washington, 1909), p. 32.

⁸¹ Defeated by 353,977 nays against 91,851 yeas. Curti, *Resultate*, etc., p. 48.

⁸² Defeated by 255,984 nays against 195,765 yeas. *Ibid.*, p. 54.

proved acceptable to the majority on other grounds, have been bitterly opposed by strong minorities on account of their bureaucratic tendencies or consequences.

Bills have also often been defeated in a referendum simply because the country was generally dissatisfied with its representatives and rulers. "Those people in Berne need a lesson," such has repeatedly been the somewhat juvenile but very human argument of the average Swiss citizen voting against some unimportant and by no means objectionable measure. This was particularly noticeable in 1884 when the referendum was demanded by nearly 100,000 voters on four federal bills at once, none of which was clearly unreasonable, but all of which were vetoed by large majorities.⁸³

The referendum has furthermore worked against what one might call ideological legislation. Measures such as the "right-to-work" bill above referred to, which are grounded solely or mainly on abstract conceptions of justice, are almost certain to be defeated. The popular vote has time and again shown that the people are interested in the immediate practical benefits to be derived from a law much more than in the intrinsic excellence of its basic principle. It follows that a defeated bill may very well be taken up again by its authors, modified in some of its minor details and submitted shortly after to a new judgment with every chance of success. Such was the case in Zurich when in 1899 the people refused to contribute to the building of an art museum and reversed their decision seven years later.⁸⁴ Similarly the Swiss people vetoed a bill to introduce government ownership of railroads in 1891 and accepted an analogous measure in 1898.⁸⁵ In 1900 the people, by a majority of nearly 200,000

⁸³ This referendum was popularly styled the "four-hunched camel." One of the "hunches" was a bill to grant the Swiss embassy at Washington an additional yearly credit of \$2000. Over 200,000 citizens thought it worth their while to vote against this act of lavish extravagance, which they suspected to be prompted by motives of personal favoritism. Curti, *Resultate*, etc., pp. 45-47.

⁸⁴ *Ibid.*, p. 14.

⁸⁵ *Ibid.*, pp. 48, 49, 56, 57. In the first vote there were 289,406 nays and 130,729 yeas and in the second, 386,634 yeas and 182,718 nays. The proposed price of the purchase, which was considered exorbitant in the first case, was the main reason for the negative verdict in 1891.

nays repudiated a sickness and accident insurance bill that had been carried in both Houses with only one dissenting vote.⁸⁶ An amended insurance bill has been passed by the Federal Assembly in the summer of 1911 and is about to be submitted to a second popular trial.⁸⁷

The third tendency shown by the referendum is a strong dislike for extravagance or, better said, for its necessary consequence. The people are by no means averse to fine public buildings and cheap government service, but when it comes to footing the bill they are very apt to object. This has been the case in the cantons and in the larger municipalities, where property and income taxes prevail, more than in the federal government, which relies on indirect taxation for its expenditures. The unfavorable financial situation of several commonwealths and cities is to be ascribed, to no small degree, to the referendum and to the inconsistent use that is made of it. Expenditures are tacitly approved, light, water rates and the like lowered, but all attempts at a corresponding increase of taxes, especially on small and moderate incomes, are ruthlessly voted down.⁸⁸ The result too often is a steady aggravation of public indebtedness, as in Basle and Geneva, or an unduly high rate of taxation on larger fortunes, with fiscal evasion as a logical consequence, as in Zurich and St. Gall.

It is time to conclude. I will not take up one after another all the standard arguments pro and con popular votes and discuss them academically as has so often been done. I will say, however, that, viewed in the light of Swiss experience, the apprehensions of those who predict that the initiative and referendum lead to social revolution are as unfounded as the fears of those who expect these institutions to work against all cultural

⁸⁶ Curti, *Resultate*, etc., p. 57.

⁸⁷ On February 4th, 1912, this bill was adopted by a popular majority of nearly 50,000 yeas.

⁸⁸ Cf., *Ibid.*, pp. 12, 13, 14, 21, 26, 30. Almost every month the daily press in Switzerland records some incident of this kind.

progress.⁸⁹ In Switzerland their result has simply been a legislation eminently characteristic of the national temperament. The Swiss have therein shown themselves as they are, a well-schooled, practical, unimaginative, thrifty and enterprising people, averse to high-flown political speculation, but awake to the possibilities of careful progress; jealous of their local autonomy, but not stubbornly loath to sacrifice it on the altar of national unity when general interest clearly demands a sacrifice; suspicious of all superiority and hostile to all social and economic privileges, but still more suspicious of and hostile to all policies which tend to destroy the privileges of superior wealth and ability by encroaching too boldly on the personal liberty of all; impatient of arbitrary rule, but willing to submit to authority when imposed by the will of the majority and especially when backed by historical tradition; unsentimentally sympathetic to deserving poverty, but almost harshly unfeeling for thriftless indolence.

The initiative and referendum have sometimes been accused of making party government impossible. This criticism,—which would perhaps more justly apply to proportional representation, another novel electoral scheme which is making rapid progress in Switzerland,—is not borne out by Swiss experience. All that can be said, is that popular votes have somewhat strengthened the influence and self-confidence of minority parties.

It has also been claimed that they tend to weaken the elected legislators' sense of public responsibility by transferring the right of final decision on important measures to the people at large.⁹⁰ Where the referendum is compulsory this may be true. Where it is optional however, I feel inclined to attribute the lowering of standards, which unfortunately seems to have

⁸⁹ Such pessimists have not been wanting in Switzerland. Answering the popular "safety-valve" or "blood-letting" argument invoked in favor of direct legislation, Cherbuliez in 1843 expressed himself very deprecatingly on the subject of "those anticipating remedies which occasion the very evils they are meant to prevent," by "inoculating the masses with the virus of revolution." *op. cit.*, vol. I., p. 89. Bluntschli was also very skeptical. Cf. his views in his *Geschichte des schweizerischen Bundesrechts*, (2 vols., 2nd ed., Stuttgart, 1875), vol. ii., p. 543.

⁹⁰ Dubs, *op. cit.*, p. 20. Droz, *op. cit.*, p. 464. A. B. Hart, *Actual Government* (New York, 1906), pp. 79, 81.

taken place in Switzerland in the course of the last generation, to other causes, and especially to the anonymous, impersonal committee form of procedure which prevails in all Swiss legislatures. All law-makers are afraid of a popular veto and this may tend to make them, not reckless or careless, but on the contrary unenterprising and over-timid. Against this very real danger the initiative seems to be the best safeguard.

Among the many stock arguments in favor of direct popular legislation, I will mention but one, which Swiss experience has undoubtedly shown to be sound, and that is the educational argument.

All political institutions that are democratic make for public enlightenment. Under the representative system however, discussions on public policy too often degenerate into disputes on personal merits. One votes for or against individuals rather than for or against ideas and the successful candidate is very apt to be the popular orator, whose genial appearance, winning ways, and often unscrupulous, demagogical methods please the people by flattering their prejudices and their passions. In the referendum, on the other hand, objective argument counts for much more. And everyone will agree that it is morally, as well as intellectually, better to vote at the dictate of one's reason rather than on the impulse of one's instincts. It has been time and again shown in Switzerland that a politician who has once gained the people's good will can repeatedly favor measures to which his electors object, without in the least thereby injuring his popularity.

A humorist, quoted by Professor Borgeaud,⁹¹ once remarked: "The Swiss are a singular people; they disown their representatives and then they reelect them!" This illustrates what is perhaps less a singularity of the Swiss, than an inconsistency common to the whole human race.

Who, in the arena of politics as well as in the realm of romance, does not sometimes disown the choice of his natural sympathy, when he is reasonable? And who does not ratify that choice when he is passionate? And is any one ever

⁹¹ In an article published in the *Revue de Droit Public*, 1896, p. 528.

quite reasonable and quite dispassionate in matters of personal preference?

To my mind the greatest advantage of the optional referendum resides in the fact that, on some momentous occasions in the life of a nation, it gives reason a hearing amidst the din and confusion of current politics.

It has not been my purpose to defend a cause, but to present the results of a practical experiment, and this I have sought to do, as impartially and concisely as possible.

I will say in conclusion that no community in Switzerland having once exercised the rights of initiative and referendum, has ever abandoned them.⁹² It by no means follows that these rights are absolutely just in their essence nor always and everywhere beneficial in their consequences. The view one takes of the subject depends on one's political standpoint and is biased by one's general social and ethical philosophy. The question of popular votes is, to my mind, simply a part of a vastly greater problem, the problem of democracy.

Those who, like Taine, believe that "a nation may perhaps say which form of government it likes, but cannot say which it needs," will not hesitate to condemn the plebiscite in every form.

The opportunists in politics,—and who is not, to a certain degree at least, a political opportunist,—will judge the tree by the fruit thereon, and the fruit by the standards of his tastes and interests.

But the sincere and thorough-going democrat, for whom popular sovereignty is more than a mere phrase, who holds that a nation is the only competent arbiter of its likings as well as of its needs, and who maintains that, as regards its own destiny, it has the right even to be wrong, cannot consistently repudiate institutions, whose sole purpose and whose main consequence, is to adjust political relations so that the untrammelled will of the majority may rule supreme.

⁹² In only two cases have popular votes been restricted. Berne in 1880 abandoned the compulsory referendum on the budget, and Zurich in 1899 somewhat limited the scope of its general compulsory plebiscite. Curti, *Resultate*, etc., pp. 4, 5.